

SENATE BILL

No. 70

**Introduced by Senator Dutton
(Coauthor: Senator Wyland)**

February 16, 2010

An act to amend Sections 226.7 and 512 of the Labor Code, relating to employment.

LEGISLATIVE COUNSEL'S DIGEST

SB 70, as introduced, Dutton. Meal periods.

(1) Existing law requires an employer to provide an employee who works more than 5 hours in a workday with a meal period of not less than 30 minutes, unless the employee works no more than 6 hours in a workday and the meal period is waived by mutual consent. An employer also is required to provide an employee who works more than 10 hours in a workday with a second meal period of not less than 30 minutes, unless the employee works no more than 12 hours, the first meal period was not waived, and the 2nd meal period is waived by mutual consent. The Industrial Welfare Commission (IAC) of the Department of Industrial Relations adopts and amends wage orders that, among other things, specify how meal periods are required to be provided to covered employees within various industries, including the procedures for providing employees with on-duty meal periods.

This bill would revise the statutory requirements for the provision of meal periods to specify that the requirements apply only to employees subject to the meal period provisions of an order of the IWC. The statutory requirements for providing the meal periods would be revised to specify that a meal period based on working more than 5 hours in a workday is required to be provided before the employee completes 6

hours of work, unless the existing waiver provision is invoked. The waiver provision for the 2nd meal period would be changed to provide an exception for different provisions within IWC wage orders in effect as of January 1, 2009, and to permit the employer and employee to agree to waive either the first or the 2nd meal period if the employee otherwise is entitled to 2 meal periods. The bill also would specify conditions under which on-duty meal periods are permitted rather than meal periods in which the employee is relieved of all duty.

The bill would require that orders of the IWC be interpreted in a manner consistent with the specified provisions, and would require the Department of Industrial Relations to amend and republish specified IWC wage orders to be consistent with the revised meal period requirements.

The bill also would declare that all those provisions are declaratory and not amendatory of existing law.

(2) Existing law requires an employer who fails to provide an employee with a required meal or rest period to pay the employee one hour's pay for each workday that the meal or rest period is not provided.

This bill would specify that the penalty of one hour's pay is not restitutionary in nature and does not constitute additional wages to the employee. This bill would define "providing" a meal or rest period to mean making one available to the employee without interfering with its use.

(3) The California Constitution authorizes the Governor to declare a fiscal emergency and to call the Legislature into special session for that purpose. The Governor issued a proclamation declaring a fiscal emergency, and calling a special session for this purpose, on January 8, 2010.

This bill would state that it addresses the fiscal emergency declared by the Governor by proclamation issued on January 8, 2010, pursuant to the California Constitution.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 226.7 of the Labor Code is amended to
2 read:

226.7. (a) No employer shall require any employee to work during any meal or rest period mandated by an applicable order of the Industrial Welfare Commission.

(b) If an employer fails to provide an employee a meal period or rest period in accordance with an applicable order of the Industrial Welfare Commission, the employer shall pay *a penalty to the employee in an amount equal to one additional hour of pay* at the employee's regular rate of compensation, *notwithstanding the duration of the meal or rest period*, for each ~~work-day~~ *workday* that the meal or rest period is not provided. *This statutory penalty is not restitutionary in nature and does not constitute additional wages to the employee.*

(c) *For purposes of this section, an employer provides a meal or rest period by making one available to the employee without interfering with its use.*

SEC. 2. Section 512 of the Labor Code is amended to read:

512. (a) *For purposes of this section, the following terms have the following meanings:*

(1) *"Off-duty meal period" means a meal period of not less than 30 minutes during which the employee is relieved of all duty.*

(2) *"Providing the employee with" means giving the employee an opportunity to take.*

(a)

(b) ~~An employer may shall not employ an employee for a work who is subject to the meal period of provisions of an order of the Industrial Welfare Commission and who works more than five hours per day in a workday without providing the employee with a one off-duty meal period of not less than 30 minutes, except that if the total work period per day of per workday before the employee is completes six hours of work. If an employee works no more than six hours, the meal period may be waived by mutual consent of both per workday, the employer and employee may agree to waive the employer's duty of providing the employee with a meal period.~~
An employer ~~may~~ shall not employ an employee for a work who is subject to the meal period of provisions of an order of the commission and who works more than 10 hours ~~per day~~ in a workday without providing the employee with a second off-duty meal period ~~of not less than 30 minutes, except that if the total hours worked is.~~ Except as authorized by an Industrial Welfare Commission wage order in effect as of January 1, 2008, if an

1 *employee works no more than 12 hours in a workday, the second*
2 *meal period may be waived by mutual consent of the employer*
3 *and the employee only if the first meal period was not waived may*
4 *agree to waive the employer's duty of providing the employee with*
5 *either the first or the second meal period, but not both.*

6 *(c) Notwithstanding subdivision (b), an on-duty meal period*
7 *shall be permitted for an employee covered by an order of the*
8 *Industrial Welfare Commission that authorizes an on-duty meal*
9 *period if the employer and the employee have entered into a written*
10 *agreement for an on-duty meal period, the employee has an*
11 *opportunity to eat while on duty, the on-duty meal period is counted*
12 *as time worked, and the nature of the work prevents the employee*
13 *from being relieved of all duty based on at least one of the*
14 *following conditions:*

15 *(1) The employee works alone or is the only person in the*
16 *employee's job classification who is on duty at the location or in*
17 *the department, or there are no other qualified employees who*
18 *can reasonably relieve the employee of all duty.*

19 *(2) State or federal law imposes a requirement that the employee*
20 *remain on duty at all times.*

21 *(3) The nature of the work or the relevant circumstances make*
22 *it unreasonable or unsafe for the employee to be relieved of all*
23 *duty.*

24 *(4) The work product or process will be destroyed or damaged*
25 *by relieving the employee of all duty.*

26 *(5) The employee works with perishable products, including the*
27 *transportation and delivery of those products, and therefore cannot*
28 *reasonably be relieved of all duty.*

29 *(6) The employee has direct responsibility for children who are*
30 *under 18 years of age or who are not emancipated from the foster*
31 *care system and who, in either case, are receiving 24-hour*
32 *residential care, or is an employee of a 24-hour residential care*
33 *facility for the elderly, blind, or developmentally disabled*
34 *individuals.*

35 *(d) If an employee is entitled to two meal periods pursuant to*
36 *subdivision (b), both meal periods may be on-duty meal periods*
37 *if the requirements of subdivision (c) are met.*

38 *(e) All orders of the Industrial Welfare Commission shall be*
39 *interpreted in a manner consistent with this section, and the*
40 *Department of Industrial Relations shall amend and republish*

1 *Industrial Welfare Commission Wage Order Numbers 1 to 13,*
2 *inclusive, and 15 to 17, inclusive, to be consistent with this section,*
3 *but shall make no other changes to the wage orders.*

4 ~~(b)~~

5 (f) Notwithstanding subdivision ~~(a)~~ (b), the Industrial Welfare
6 Commission may adopt a working condition order permitting a
7 meal period to commence after six hours of work if the commission
8 determines that the order is consistent with the health and welfare
9 of the affected employees.

10 ~~(e)~~

11 (g) Subdivision ~~(a)~~ (b) does not apply to an employee in the
12 wholesale baking industry who is subject to an Industrial Welfare
13 Commission wage order and who is covered by a valid collective
14 bargaining agreement that provides for a 35-hour workweek
15 consisting of five ~~seven-hour~~ 7-hour days, payment of ~~1 and 1/2~~
16 *one and one-half times* the regular rate of pay for time worked in
17 excess of seven hours per day, and a rest period of not less than
18 10 minutes every two hours.

19 ~~(d)~~

20 (h) If an employee in the motion picture industry or the
21 broadcasting industry, as those industries are defined in Industrial
22 Welfare Commission Wage ~~Orders~~ *Order Numbers* 11 and 12, is
23 covered by a valid collective bargaining agreement that provides
24 for meal periods and includes a monetary remedy if the employee
25 does not receive a meal period required by the agreement, then the
26 terms, conditions, and remedies of the agreement pertaining to
27 meal periods apply in lieu of the applicable provisions pertaining
28 to meal periods of subdivision ~~(a)~~ of this section (b), Section 226.7,
29 and Industrial Welfare Commission Wage ~~Orders~~ *Order Numbers*
30 11 and 12.

31 SEC. 3. The amendment of Section 512 of the Labor Code
32 made by this act does not constitute a change in, but is declaratory
33 of, existing law.

34 SEC. 4. This act addresses the fiscal emergency declared by
35 the Governor by proclamation on January 8, 2010, pursuant to
36 subdivision (f) of Section 10 of Article IV of the California
37 Constitution.

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